

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Case No. 77-71100

City of Detroit, *et al.*,

Sean F. Cox

United States District Court Judge

Defendants.

ORDER

In 1977, the United States Environmental Protection Agency initiated this case against the City of Detroit and the Detroit Water and Sewerage Department (“DWSD”), alleging violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* Over the years, a number of other agencies and entities were made parties to this case, including the State of Michigan and the counties of Wayne, Oakland, and Macomb.

By virtue of the Sixth Circuit’s decision in *United States v. City of Detroit*, 712 F.3d 925 (6th Cir. April 8, 2013), two unions that have members employed by the DWSD, the American Federation of State, County & Municipal Employees Local 207 and Senior Accountants, Analysts and Appraisers Association, are now parties to this case.

On March 27, 2013, after having issued a number of orders relating to the DWSD, this Court issued an Opinion & Order Terminating Second Amended Consent Judgment and Closing the Case. (Docket Entry No. 2528).

The City of Detroit and the DWSD have recently filed motions (*see* Docket Entry Nos. 2559 & 2561) seeking relief under Fed. R. Civ. P. 60(b)(6), wherein they argue that

circumstances have substantially changed since this Court issued the underlying orders in this case, and since it closed the case, and that the Court should issue an order addressing several issues.

This Court agrees that circumstances have substantially changed since this Court issued the underlying orders in this case and since it closed this case:

After the City filed its Notice of Appeal on May 22, 2013, the City filed for bankruptcy protection under Chapter 9 of the United States Bankruptcy Code.

During the City of Detroit's bankruptcy proceedings, the Honorable Steven Rhodes ordered the City and other parties to mediate issues concerning the DWSD and the potential creation of a regional authority to manage the DWSD system. The undersigned was appointed as the mediator of those matters.

In September of 2014, the City and the counties of Macomb, Oakland, Wayne, along with the State of Michigan, executed a Memorandum of Understanding ("MOU") to establish a regional water and sewer/storm water authority to be called the Great Lakes Water Authority (the "GLWA"). The GLWA has since been established and it has entered into a lease agreement with the City pertaining to the regional assets of the DWSD system. The lease agreement has been executed, but will not be effective until certain conditions have been met, by no later than January 1, 2016.

Pursuant to the MOU, the GLWA will operate all regional water and sewer systems and make lease payments to the City, to be applied to either the City's local infrastructure improvements or the City's share of DWSD debt service. Thus, the GLWA will operate the main assets of the system, such as water-treatment plants and the wastewater treatment plant. The City will only manage and operate the local water and sewer infrastructure in Detroit. The parties anticipate that by January 1, 2016, the GLWA will be fully operational, operating and managing the main assets of the system, and that a new, scaled-down version of the DWSD ("DWSD-Retail") will be operating only the local infrastructure in Detroit.

(Docket Entry No. 2563). This Court issued an order on October 14, 2015, indicating that the case should be remanded to this Court for consideration of the requested relief. (Docket Entry No. 2563).

In an order issued on October 30, 2015 (Docket Entry No. 2564), the Sixth Circuit remanded the case to this Court, so that this Court can consider the relief requested by the City

and the DWSD. Copies of the actual orders requested by the City and/or the DWSD are located at Docket Entry Nos. 2559-2 & 2561-2.

The Court hereby **ORDERS** that, if any party to this case opposes any portion of the relief requested by the City and/or the DWSD in the proposed orders (Docket Entry Nos. 2559-2 & 2561-2), that party **shall file a brief of no more than 25 pages no later than November 23, 2015.**

In addition, because the Court believes that AFSCME Council 25 should have an opportunity to voice any objections to the relief requested by the City and/or the DWSD that may impact its members, the Court hereby **GRANTS** the Motion to Intervene filed by AFSCME Council 25 (Docket Entry No. 2546) to the extent that AFSCME Council 25 may file a brief responding to the relief requested in the orders proposed by the City and the DWSD. That brief **shall be no more than 25 pages and shall be filed no later than November 23, 2015.**

IT IS FURTHER ORDERED that the City and the DWSD shall file any reply briefs, **of no more than 10 pages**, in support of their requested relief no later than **November 30, 2015.**

The parties will be notified by a separate order if the Court decides to entertain oral argument as to this matter.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: November 5, 2015

I hereby certify that a copy of the foregoing document was served upon counsel of record on November 5, 2015, by electronic and/or ordinary mail.

S/Kelly Winslow for Jennifer McCoy
Case Manager Generalist

